

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the application made by the tenants for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlord return all or part of the pet damage deposit and security deposit and to recover the filing fee from the landlord for the cost of this application.

Despite being served with the tenant's application and notice of hearing documents by registered mail on May 5, 2010, the landlord did not attend the conference call hearing.

The tenants both gave affirmed testimony.

Issues(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

This month-to-month tenancy began on December 15, 2008 and ended on February 28, 2010 after the tenants had given appropriate notice to vacate. Rent in the amount of \$1,150.00 was due in advance on the 1st day of each month, and there are no rental arrears. The landlord collected a security deposit from the tenants in the amount of \$575.00 on December 15, 2008 as well as a pet damage deposit in the amount of \$200.00 on January 1, 2009.

The tenants testified that the rental unit is a basement suite in a duplex and the landlord resided in the upper unit. The other side of the duplex is also rented by this landlord.

The tenants testified that the walls were new when they moved in, and had not yet been painted, nor was the electrical work finished in the entry area when the initial walk-through was done. The landlord stated that he would get to it. The landlord instead claimed that the entry area was a common area, which was not part of the agreement. The tenants are claiming 15%, or \$2,415.00 for 15% of unusable and unfinished space that they rented.

The tenants also testified that the City required the landlord to revert to a sewer system in the spring of 2009, and the landlord decided to change the system himself, dug up the yard and left a hole for about a week which was about 8 feet deep. The City employees then arrived to hook up the pipes and the landlord filled in the hole, but left the tenants' portion of the yard with dirt and sand. He had re-landscaped his side of the yard. They stated they had grass when they moved in, and are claiming \$975.00, being 10% of the rent paid for the last 10 months of the tenancy as well as cleaning costs in the amount of \$170.00 because of dirt and mud dragged into the house due to the failure of the landlord in completing the landscaping. The tenants also stated that the work took much longer than it should have if he had hired professionals to do the work. They were also without water and a toilet off and on for multiple days until the work was completed.

The tenants also testified that the hot water tank had burst in the master bedroom of their unit, and the landlord tried to remedy the flood with blowers and fans for 4 or 5 days. The smell required them to tear up the carpets, which were replaced by the landlord. Their hydro bill went up from about \$83.00 per month to approximately \$195.00. The tenancy agreement states that hydro is shared equally with the landlord. They provided verbal testimony that the billing date for the hydro for the months of November 4, 2009 to January 5, 2010 was \$598.81 and their share was \$296.00, and the bill for the period of January 4 to February 5, 2010 was \$195.00. The tenants are claiming a \$300.00 refund for paying extra hydro.

The tenants also testified that they provided the landlord with their forwarding address in writing on March 14, 2010 by placing it in the landlord's mail box. The landlord responded to the tenants in writing on March 16, 2010 acknowledging receipt of that letter. The landlord has not applied for dispute resolution, nor has he returned the security deposit or the pet damage deposit to the tenants.

Analysis

The Residential Tenancy Act states that the applicants are required to serve the respondent with a copy of the application for dispute resolution and notice of hearing documents within 3 days of making the application, and that documents sent by registered mail are deemed to be served 5 days after mailing. I find that the tenants made their application on May 4, 2010 and served the landlord with the aforementioned documents on May 5, 2010 by registered mail, which were deemed received by the landlord on May 10, 2010.

Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. I find that the tenancy ended on February 28, 2010, and that the tenants provided their forwarding address in writing on March 14, 2010. I further find that the landlord has failed to repay the security deposit and the pet damage deposit or make an application for dispute resolution within 15 days of receiving the tenants' forwarding address in writing.

With respect to the tenants' application for a monetary order for damages, I have not been provided with a copy of the tenancy agreement, however I accept the evidence of the tenants that they did suffer damages, in that the unit they rented was not in the condition that was promised, and was not maintained in the condition contracted for. The landlord failed to complete the landscaping, and failed to provide the entire living

space that was contracted for. The landlord also ought to have offered the tenant a reduced amount of hydro due to the flood which was of no fault of the tenants.

I find that the tenants have established a claim and are entitled to recovery from the landlord 15% of the rent paid for the months of January, 2009 to February, 2010 in the amount of \$2,415.00, for the loss of the entry area that they testified is approximately 15% of the space they contracted for.

I further find that the tenants' claim for \$300.00 for excessive hydro has been established. I have no reason to not accept the evidence of the tenants that their hydro bill jumped from \$83.00 to \$196.00 because of the fans and blowers placed in the unit by the landlord.

With respect to the tenants' claim for loss of use of the yard, I find that the tenants changed their position from the date their application was filed to the date of the hearing. The application states that they were inconvenienced for 7 months, and at the hearing claimed 10 months of the tenancy. I do not find that the tenants have fully established that 10% would be a fair amount to recover from the landlord, and I do not find that the tenants are entitled to cleaning costs during that period. I do note, however, that the landlord completed the landscaping on his side of the yard and left the tenants' portion unfinished, and that the portion of the yard was part of the tenancy. I therefore find that the tenants are entitled to rent abatement at 5% for a period of 7 months, or \$402.50.

Conclusion

I find that the tenants have established a claim for the security deposit of \$575.00 and pet damage deposit of \$200.00, and double the base amount of the security and pet damage deposits in the amount of \$1,550.00.

The tenants are also entitled to recovery of the losses suffered for the reasons mentioned above, and I grant the tenants an order in the amount of \$3,117.50.

The tenants are also entitled to recover the \$50.00 filing fee for this application. I grant the tenants an order under section 67 for the balance due of \$4,717.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 21, 2010.

Dispute Resolution Officer